



Versus

STATE OF GUJARAT

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Appearance:

MR JF SHAH for Petitioner

SERVED for Respondent No. 1, 3

MR DA BAMBHANIA for Respondent No. 2

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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE M.S.SHAH

Date of decision: 26/11/96

ORAL JUDGMENT (PER THAKKAR J.):

1. This Letter Patent Appeal is directed against an order dated 19th February 1996, passed by the learned single Judge summarily dismissing Special Civil Application No.429 of 1996.

2. The appellant is the original petitioner . The case of the appellant is that her husband was serving as Head clerk with Sheth D.V.Government Higher Secondary School, outside Savasar Naka, Anjar, District Kutchh, respondent no.3. He disappeared from 1st July 1991, though according to the respondents the husband of the appellant disappeared from 1st September 1991. It appears that respondent no.3 informed Judicial Magistrate, First Class, Gandhidham about the disappearance of the husband of the appellant on 4th July 1992. The appellant filed First Information Report about disappearance of her husband on March 18, 1995. The appellant made an application to the Commissioner of Higher Education, Gujarat State, Gandhinagar, respondent no.2 herein, on 13th March 1995 praying therein that since her husband had disappeared from 1991, as per Government Resolution dated 25th September 1987, she may be granted pensionary and other benefits to which she would be entitled to. No reply was given to the appellant. The said prayer was reiterated by an application dated 5th July 1995, but nothing was done in the matter. The appellant, therefore, approached this Court by filing the aforesaid Special Civil Application.

3. The learned single Judge dismissed the petition mainly on the ground that there was no demand by the petitioner and refusal by the respondents and, hence, a writ of mandamus cannot be sought by her. Though Rule

was issued on 17th January 1996, no affidavit-in-reply was filed by the State. At the time of dismissal of the petition, the learned single Judge observed that it would be open to the petitioner (present appellant) to file a detailed representation in form of notice of demand of justice to the respondents and the respondent authorities were directed to dispose of the said representation by passing a speaking order within a period of one month from the date of receipt of notice for demand of justice. It appears that the representation was made by the present appellant on 21st June 1996.

4 From the record, it is clear that the office of the Commissioner of Higher Education issued a chargesheet on 14th June 1996 against the husband of the present appellant. He was, however, not available and, hence, public notice was issued in a daily news-paper "Foolchhab" on 25th June 1996. Inquiry Officer was appointed on 24th June 1996. In the show cause notice it was mentioned that the employee was not attending the office and he had voluntarily remained absent from 1st September 1991. It was also stated that though he had taken loan of Rs.63,000/- necessary papers were not submitted by him. He was, therefore, called upon to explain as to why proceedings should not be initiated and appropriate punishment should not be imposed on him. Since the employee did not remain present, final order was passed on 28th June 1996, by which he was removed from service. Since the above order was passed after the petition was dismissed by the learned single Judge and meanwhile the Letters Patent Appeal was also filed, a prayer was made to amend the main petition challenging the order of removal of the husband of the appellant from service, which was granted and the said order dated 28th June 1996 is also challenged in this Letters Patent Appeal. After notice was issued the respondents appeared and in the present Letters Patent Appeal, an affidavit is filed on behalf of respondent no.2, supporting the action taken by the authorities.

5. We have heard Mr.J.F.Shah, learned Counsel for the appellant and Mr.D.A.Bambhania, learned Asstt.Government Pleader on behalf of the respondents.

6. Mr.Shah learned counsel for the appellant contended that the husband of the appellant disappeared from July/September 1991 and that fact was very much known to respondent no.3. This is clear from the fact that respondent no.3 informed Judicial Magistrate, First Class, Gandhidham on 4th July 1992. No disciplinary action for remaining absent from duty was taken by the

authorities at that time. The appellant lodged First Information Report on 18th March 1995 and immediately within a period of two weeks the appellant made a prayer for granting pensionary and other benefits of her husband to her. Since no action was taken by the respondents, another representation was made but neither the benefits were extended in her favour nor even a reply was sent to her. In these circumstances she had to approach this Court. Learned Counsel for the appellant has submitted that the learned single Judge has committed an error of law in dismissing the petition on the ground that there was no demand by the appellant and refusal by the authorities. According to him, the demand was very much made in March 1995 and in September 1995 and since no justice was meted out to her, she was constrained to approach this Court.

7. On merits Mr. Shah submitted that authorities have committed an error in totally ignoring the Resolution of the Government, dated 25th September 1987. Our attention was specifically invited to clause (ii) which states that in case of disappearance of an employee, after lapse of period of one year, other benefits like DCRG/Family pension may be granted to the family subject to certain conditions. Sub-clause (a) of clause (ii) reads as under:

- (a) The family must lodge a complaint with  
the concerned Police Station and obtain a  
report that the employee has not been  
traced after all efforts had been made by  
the Police."

Sub-clause (b) provides that an Indemnity Bond should be taken from the nominee/dependent of the employee that all payments will be adjusted against the payment due to the employee in case he appears on the scene and makes any claim. Clause (2) clarifies that in case the disbursement of the DCGR is not effected within three months of the date of application, interest shall be paid at the rates applicable and responsibility for the delay fixed.

8. According to learned Counsel for the appellant, a complaint was lodged by the appellant at the concerned Police Station regarding disappearance of her husband in March 1995. At the time of hearing of appeal, a Certificate dated August 27, 1996 was also produced said to have been issued by Police Inspector, Police Station, Gandhinagar, wherein it was mentioned that though efforts were made, no information regarding whereabouts of the

husband of the appellant was received by the said Police Station. The learned Counsel contended that in view of the above factual situation the appellant would be entitled to get all benefits in accordance with the Resolution dated 25th September 1987. The appellant would also be entitled to interest in view of the fact that though an application for the grant of the benefits was made in March 1995, authorities have deprived the appellant of the said benefits and the benefits have not been paid within three months as required by clause (2) of the above resolution.

9. Mr.Bambhania, learned AGP on the other hand supported the order passed by the authorities. He submitted that the husband of the appellant remained absent without taking leave and without informing the office. Relying on affidavit-in-reply filed by the Deputy Director of Higher Education, it was submitted that in March 1995 when First Information Report was lodged by the appellant, the matter was investigated by the police authorities as per the information and report given by the Police Inspector of Sector 21, Police Station, Gandhinagar. He submitted that neither the husband of the appellant appeared at the time when the show cause notice was issued in pursuance of the order passed by the learned Single Judge nor any justifiable ground was put forth and hence the order of removal was passed which cannot be said to be contrary to law. In 1991 when the employee ceased to attend the office, the action taken cannot be said to be contrary to laws.

10. Having heard the learned Counsel for the parties, we are of the opinion that the appeal deserves to be allowed. In our opinion, the learned single Judge was not right in dismissing the petition and refusing to grant relief on the ground that no demand of justice was made and there was no refusal by the authorities. Since the appellant had made an application in March 1995 for grant of benefits and it was reiterated in September 1995, the petition could not have been dismissed on the ground that there was no demand for justice.

11. On merits, we are of the view that it is not established that the husband of the appellant voluntarily remained absent for which an order of removal could be passed against him. It is true that the husband of the appellant did not attend the office from 1st September 1991. It is also true and is not disputed by Mr.Shah learned Counsel for the appellant that an amount of loan was taken by the husband of the appellant and a substantial amount may be outstanding. It however,

cannot be disputed that if the husband of the appellant is otherwise entitled to pension and other benefits, those benefits cannot be taken away and since the case is covered by the Government Resolution dated 25th September 1987, the appellant will be entitled to those benefits. In view of the fact that some amount is due which has to be taken into account even at the time of granting the benefits to which the appellant may be entitled, we are of the view that it would be proper to direct the respondent authorities to pass an appropriate order in light of the above Resolution. We may make it clear that since the First Information Report was lodged at the Police Station and that a report dated 27th August 1996 is submitted which is brought on record, clause (a) of subclause (ii) has been complied with. Now the respondents will pass a fresh order in accordance with law.

12. In the result this appeal is partly allowed. The order passed by the learned single Judge and the order passed by respondent no.2 dated 28th June 1996 are hereby quashed and set aside. Respondent no.2 will pass fresh order in the light of the observations made hereinabove and keeping in mind the Government Resolution dated 25th September 1987 within eight weeks from the receipt of writ of this Court.

13. Appeal is accordingly allowed partly. In the facts and circumstances of the case, there will be no order as to costs.

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